

HOLOCAUST (RETURN OF CULTURAL OBJECTS) (AMENDMENT) ACT 2019

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Holocaust (Return of Cultural Objects) (Amendment) Act 2019 (c. 20) which received Royal Assent on 4 July 2019.

- These Explanatory Notes have been Department for Digital, Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	3
Policy background	3
Legal background	3
Territorial extent and application	4
Commentary on provisions of Act	5
Section 1: Repeal of Sunset Provision in the Holocaust (Return of Cultural Objects) Act 2009	5
Section 2: Extent, Commencement and Short Title	5
Commencement	6
Financial implications of the Act	6
Compatibility with the European Convention on Human Rights	6
Related documents	7
Annex A - Territorial extent and application in the United Kingdom	8
Annex B - Hansard References	9

Overview of the Act

- 1 The Act amends the Holocaust (Return of Cultural Objects) Act 2009 (the “2009 Act”) to prevent it from expiring on 11 November 2019.
- 2 The 2009 Act received Royal Assent on 12 November 2009. Section 4(7) of the 2009 Act contains a sunset clause that causes the 2009 Act to expire 10 years from the day on which it was passed. However, this Act makes provision for the 2009 Act to continue to have effect indefinitely. To achieve this, this Act repeals the sunset clause in section 4(7) of the 2009 Act.
- 3 The 2009 Act confers power on the national museums and galleries listed in section 1 (the “listed institutions”) to return certain cultural objects on grounds relating to events occurring during the Nazi era. It does so by enabling these institutions to give effect to recommendations made by the Spoliation Advisory Panel (the “Panel”) for the return of such objects. The Panel offers advice on claims for the return of cultural objects lost during the Nazi era (1933-1945) and which are now in UK national collections. This Act allows this power to continue indefinitely.

Policy background

- 4 The Panel was established by the Government in 2000 to consider claims for the return of cultural objects in UK collections lost during the Nazi era. It offers non-binding advice to museums and claimants on what might be an appropriate solution in accordance with the Washington Principles on Nazi-Confiscated Art, adopted in 1998 by 44 states, including all EU member states. These Principles aim to encourage the resolution of issues relating to the return of cultural objects lost during the Nazi era. The Panel may also advise on claims for items in private ownership but only where this follows a joint request by the claimant and the owner.
- 5 Prior to 2009, where the Panel found that the return of an item in a national museum or gallery was an appropriate solution, it was unable to recommend this because of legal restrictions in the governing legislation of these institutions. The statutory framework only allows the Board of Trustees of these institutions to dispose of items held in their collections in very limited circumstances, not including following a recommendation by the Panel.
- 6 With the introduction of the Holocaust (Return of Cultural Objects) Act 2009, the 17 listed institutions are able to return items lost during the Nazi era, where this follows a recommendation by the Panel and the Secretary of State agrees. Scottish Ministers must consent before the Secretary of State can approve a recommendation that relates to an object in the collection of one of the Scottish listed institutions. The 2009 Act includes a sunset clause which means that it will cease to have effect after 11 November 2019.

Legal background

- 7 The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

- 8 The provisions of the Act extend to England and Wales, and Scotland.
- 9 The Act contains provisions that trigger the Sewel Convention that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. A legislative consent motion was agreed by the Scottish Parliament on 8 May 2018.
- 10 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Section 1: Repeal of Sunset Provision in the Holocaust (Return of Cultural Objects) Act 2009

- 11 Section 1 of the Act amends Section 4 of the 2009 Act to remove subsection (7), which states that the 2009 Act will expire 10 years from the day it is passed. This amendment will prevent the 2009 Act from expiring on 11 November 2019, and will allow it to operate indefinitely.

Section 2: Extent, Commencement and Short Title

- 12 Section 2 describes the extent of the Act, its commencement and short title.

Commencement

- 13 Section 2 of the Act provides for commencement. The provisions of the Act came into force on the day of Royal Assent, so nothing further needs to be done to commence the Act.

Financial implications of the Act

- 14 The Act has no financial implications. The 2009 Act provides a power for the listed institutions to transfer objects from their collection where the conditions specified in the 2009 Act are met. The Act removes the sunset clause to extend this power indefinitely.

Compatibility with the European Convention on Human Rights

- 15 The Government proposes to make a statement that the provisions of the Act are compatible with the European Convention on Human Rights (the “Convention”). A formal statement under section 19(1)(a) of the Human Rights Act 1998 is not required because the Act began as a Private Member’s Bill. A statement of compatibility was also made for the 2009 Act, which stated that the 2009 Act engaged a number of Convention rights but strengthened their protection rather than interfering with them. These rights include the right to peaceful enjoyment of property (Article 1, Protocol 1), to a fair trial (Article 6), and to respect for private and family life (Article 8). That statement applies equally to the Act.
- 16 The Act also engages the prohibition on discrimination (Article 14) in combination with the right to peaceful enjoyment of property (Article 1, Protocol 1) because it allows the listed institutions to return lost cultural objects to their owners and heirs but only in cases where the object was lost during the Nazi era. As a result, it treats owners of cultural objects deprived of the peaceful enjoyment of these objects during the Nazi era more favourably than owners of cultural objects outside this group. The Act has the same effect by extending the operation of the 2009 Act indefinitely.
- 17 On the passing of the 2009 Act, potential interference with Article 14 was considered to be objectively justified and reasonable as it recognised the particular obstacles faced by individuals seeking to recover items lost during the Nazi era and the need to promote special arrangements to assist them. The Government remains of the view that limiting the power of return to the Nazi era is justified. The widespread and systematic deprivation of property in this era and the problems faced by individuals seeking to recover their property have been recognised in international declarations as requiring particular measures to remedy, including the Washington Principles. The Act recognises the continued need to assist victims of Nazi expropriation and to give effect to international standards in this area.

Related documents

18 The following documents are relevant to the Act and can be read at the stated locations:

- [Legislative Consent Motion from the Scottish Parliament](#)
- [Legislative Consent Memorandum from the Scottish Parliament](#)
- [House of Commons Briefing Paper on the Bill](#)
- [Holocaust \(Return of Cultural Objects\) \(Amendment\) Bill: Briefing for Lords Stages](#)

Annex A - Territorial extent and application in the United Kingdom

19 The provisions of the Act extend to England and Wales, and Scotland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Section 1	Yes	No	Yes	No
Section 2	Yes	No	Yes	No

Annex B - Hansard References

20 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	13 March 2018	Vol. 637 Col. 752
Second Reading	8 February 2019	Vol. 654 Col. 556
Public Bill Committee	27 February 2019	Col 1
Report and Third Reading	15 March 2019	Vol. 656 Col. 694
<i>House of Lords</i>		
Introduction	18 March 2019	Vol. 796
Second Reading	12 June 2019	Vol. 798
Third Reading	2 July 2019	Vol. 798
Royal Assent	4 July 2019	House of Commons Vol. 662 Col. 1347
		House of Lords Vol. 798

© Crown copyright 2019

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.



a Williams Lea company

Published by TSO (The Stationery Office), part of Williams Lea, and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

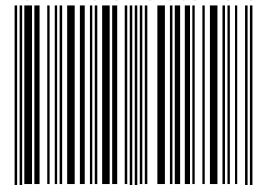
E-mail: customer.services@tso.co.uk

Textphone: 0333 202 5077

TSO@Blackwell and other Accredited Agents

£6.90

ISBN 978-0-10-560170-8



9 780105 601708